

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-04-099

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FINANCIAL
INDEMNITY COMPANY,**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Financial Indemnity Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated September 4, 2003 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on September 4, 2003, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2002 to December 31, 2002.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure, in some cases, to maintain records required when writing private passenger automobile policies in Colorado. The Respondent shall ensure that it will retain all required documents when writing private passenger automobile policies in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure, in some cases, of the Respondent's published underwriting guidelines to comply with Colorado insurance law. The Respondent shall ensure that its published underwriting guidelines are in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue C concerns the following violation: Certification and use of non-complying forms. The Respondent shall provide documentation to ensure that it will certify and use forms and endorsements in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
12. Issue D concerns the following violation: Failure, in some cases, to provide at least thirty (30) days notice of cancellation or non-renewal. The Respondent shall provide at least thirty (30) days notice of cancellation or non-renewal of policies to

ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

13. Issue E concerns the following violation: Failure, in some cases, to provide insureds with a notice of premium increase due to the driving record of one or more persons insured, and the opportunity to exclude the person(s) from coverage. The Respondent shall provide insureds with a notice of premium increase due to the driving record of such person(s) insured, and to offer to exclude such person(s) from coverage to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue F concerns the following violation: Failure, in some cases, to use correct rating elements when rating private passenger automobile policies written in Colorado. The Respondent shall use correct rating elements when rating private passenger automobile policies to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue G concerns the following violation: Failure, in some cases, to make PIP benefit payments within the time period required by Colorado insurance law. The Respondent shall review its claims handling of PIP benefit payments and implement necessary changes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue H concerns the following violation: Failure, in some cases, to notify providers and claimants in writing of the reason why a provider's claim had not been paid within thirty (30) days of receipt of all documents that may be required for payment of PIP benefits. The Respondent shall ensure that it will institute a system in which insureds are notified in writing of the reason(s) why PIP claims are not paid within thirty (30) days in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
17. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of twenty-one thousand and 00/100 dollars (\$21,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
18. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

19. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All audits shall be performed in accordance with Division guidelines. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including all monetary payments to covered persons.
20. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
21. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination report dated September 4, 2003, are hereby adopted and filed and made an official record of this office and the above Order is hereby approved this 25th day of November, 2003.



Doug Dean
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of November, 2003, I deposited the **Final Agency Order No. O-04-099 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FINANCIAL INDEMNITY COMPANY**, in the United States Mail with postage affixed and addressed to:

Mr. John Wilson Mullen, President
Financial Indemnity Company
21650 Oxnard Street, Suite 1800
Woodland Hills, CA 91367

Mr. Edward D. Cimini, Jr.
Financial Indemnity Company
PO Box 10360
Van Nuys, CA 91410-0360

A handwritten signature in cursive script, reading "Dolores Arrington".

Dolores Arrington, MA
Market Conduct Section